



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/459,788	06/02/95	HARVEY	J 5634.243

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LM61/1231

EXAMINER

CUMMING, W

ART UNIT

PAPER NUMBER

2744

DATE MAILED: 12/31/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/459,788

Applicant(s)
HARVEY, et al

Examiner
WILLIAM D. CUMMING

Group Art Unit
2744



☒ Responsive to communication(s) filed on Sep 24, 1997

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 5-34 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 5-34 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Jun 2, 1995 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 2744

DETAILED ACTION

1. The Group and/or Art Unit location of your application in the PTO has changed.

To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 2744.

5

Information Disclosure Statement

2. Receipt is acknowledged of applicant's Information Disclosure Statements filed February 6, 1996, April 7, 1997, and April 17, 1997. In view of the unusually large number of references cited in the instant application (approximately 2,200 originally and 645 in the subsequent IDS) and the failure of applicant to point out why such a large number of references is warranted, these references have been considered in accordance with 37 C.F.R. 1.97 and 1.98 to the best ability by the examiner with the time and resources available.

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Art Unit: 2744

3. The foreign language references cited therein where there is no statement of relevance or no translation are not in compliance with 37 C.F.R. 1.98 and have not been considered.

Numerous references listed in the IDS are subsequent to applicant's latest effective filing date of 9/11/87, therefore, the relevancy of these references is unclear. Also cited are numerous

5 references that are apparently unrelated to the subject matter of the instant invention such as: US Patent # 33,189 directed toward a beehive, GB 1565319 directed toward a chemical compound, a cover sheet with only the word "ZING", a computer printout from a library search with the words "LST" on it and a page of business cards including that of co-inventor James Cuddihy, among others. The relevancy of these references cannot be ascertained. Furthermore, there are
10 several database search results listed in foreign languages (such as German) which list only the title and document information; no copy has been provided, therefore, these references have not been considered.

Art Unit: 2744

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the step of receiving an information transmission containing processor instruction and a program and the

5 step of programming the receiver station to perform a predetermined secondary error correction routine in accordance with the processor instruction as stated by claim 5; the step of clearing at least a portion of the memory as stated by claim 5; the step of one of placing and replacing data at the memory to one of complete and correct a program element in consequence of the step of executing a predetermined secondary error

10 correction routine as stated by claim 7; the step of receiving an information transmission at a transmission station, the information transmission containing only a portion of processor instruction and a program, the step of generating the remainder of the program, the step of transmitting the information transmission containing the program and the processor instructions, wherein the processor instructions program the

15 receiver to perform a predetermined secondary error correction routine in accordance with the processor instructions, wherein the program enabled the receiver station to perform a primary error correction routine by processing at least a portion of the information transmission, discerning a failure evidencing one of an incomplete and an incorrect program element by reprocessing information received in the information

20 transmission as stated by claim 23; the step of effects a transmission station to

Art Unit: 2744

generate a program, the receiver station to perform a primary error correction routine by processing at least a portion of the information transmission, discerning a failure evidencing one of an incomplete and an incorrect program element by reprocessing information received in the information transmission, the step of effects a receiver
5 station to generate a program, the receiver station to perform a primary error correction routine by processing at least a portion of the information transmission, discerning a failure evidencing one of an incomplete and an incorrect program element by reprocessing information received in the information transmission as stated by claim 24; and the method steps of claims 25-34, must be shown or the feature(s) canceled
10 from the claim(s). No new matter should be entered.

5. Applicants are required to submit a proposed drawing correction in response to this Office Action. Any proposal by the applicant for amendment of the drawings to cure defects must consist of two parts:

- 15 a) A *separate* letter to the Draftsman in accordance with MPEP § 608.02(r); and
- b) A print or pen-and-ink sketch showing changes in *red ink* in accordance with MPEP § 608.02(v).

Art Unit: 2744

IMPORTANT NOTE: The filing of new formal drawings to correct the noted defect may be deferred until the application is allowed by the examiner, but the print or pen-and-ink sketch with proposed corrections shown in red ink is required in response to this Office Action, and *may not be deferred*.

5

Claim Rejections - 35 USC § 112

6. Claims 5-34 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

10

The specification does not originally support and/or inadequately describe the now claimed of the step of receiving an information transmission containing processor instruction and a program and the step of programming the receiver station to perform a predetermined secondary error correction routine in accordance with the processor instruction as stated by claim 5; the step of clearing at least a portion of the memory as stated by claim 5; the step of one of placing and replacing data at the memory to one of complete and correct a program element in consequence of the step of executing a predetermined secondary error correction routine as stated by claim 7; the step of receiving an information transmission at a transmission station, the information transmission

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Art Unit: 2744

containing only a portion of processor instruction and a program, the step of generating the remainder of the program, the step of transmitting the information transmission containing the program and the processor instructions, wherein the processor instructions program the receiver to perform a predetermined

5 secondary error correction routine in accordance with the processor instructions, wherein the program enabled the receiver station to perform a primary error correction routine by processing at least a portion of the information transmission, discerning a failure evidencing one of an incomplete and an incorrect program element by reprocessing information received in the

10 information transmission as stated by claim 23; the step of effects a transmission station to generate a program, the receiver station to perform a primary error correction routine by processing at least a portion of the information transmission, discerning a failure evidencing one of an incomplete and an incorrect program element by reprocessing information received in the

15 information transmission, the step of effects a receiver station to generate a program, the receiver station to perform a primary error correction routine by processing at least a portion of the information transmission, discerning a failure evidencing one of an incomplete and an incorrect program element by reprocessing information received in the information transmission as stated by

20 claim 24; and the method steps of claims 25-34. In order to satisfy "written

Art Unit: 2744

description" requirement of 35 USC §112 for drawings, the proper test is whether drawings conveys, with reasonable clarity to those of ordinary skill in the art, the claim subject matter. "*New matter*" prohibition of 35 USC §112 plays important role in establishing filing date of application as prima facie date of invention.

5 Patent laws do not permit insertion of additional descriptive matter subsequent to filing date in order to complete disclosure so as to conform specification's description of the invention to statutory standard (Ex parte Maizel, 27 USPQ2d 1662). The "*written description*" of the invention required by first paragraph of 35 USC §112 is separate and distinct from that paragraph's requirement of enabling
10 disclosure, since description must do more than merely provide explanation of how to "*make and use*" the invention. Applicants must also convey, with reasonable clarity to those skilled in the art, that applicant, as of the filing date sought, was in possession of the invention, with the invention being, for purpose of "*written description*" inquiry, whatever is presently claimed.

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Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 2744

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or unobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

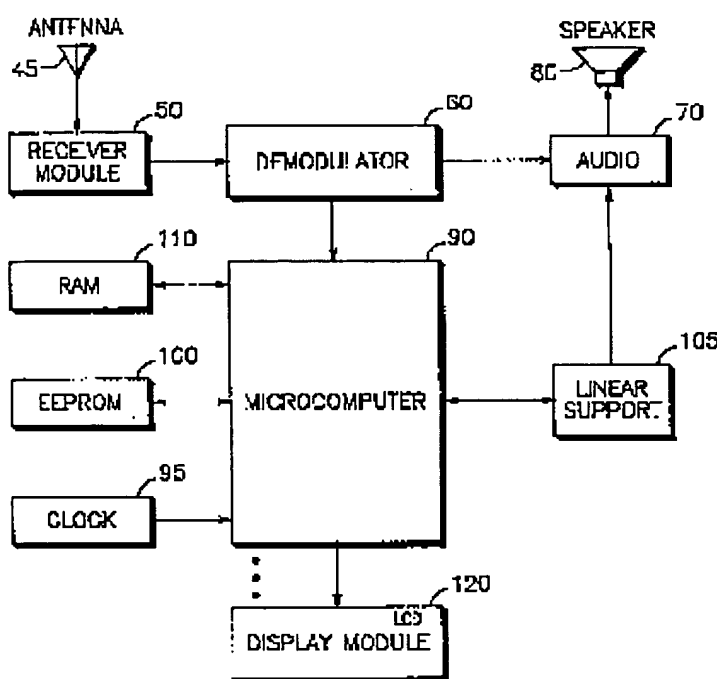
Art Unit: 2744

10. Claims 5 -12, 23, and 24-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeLuca, et al in view of George, et al..

Regarding claims 5, 25 and 29, DeLuca, et al disclose:

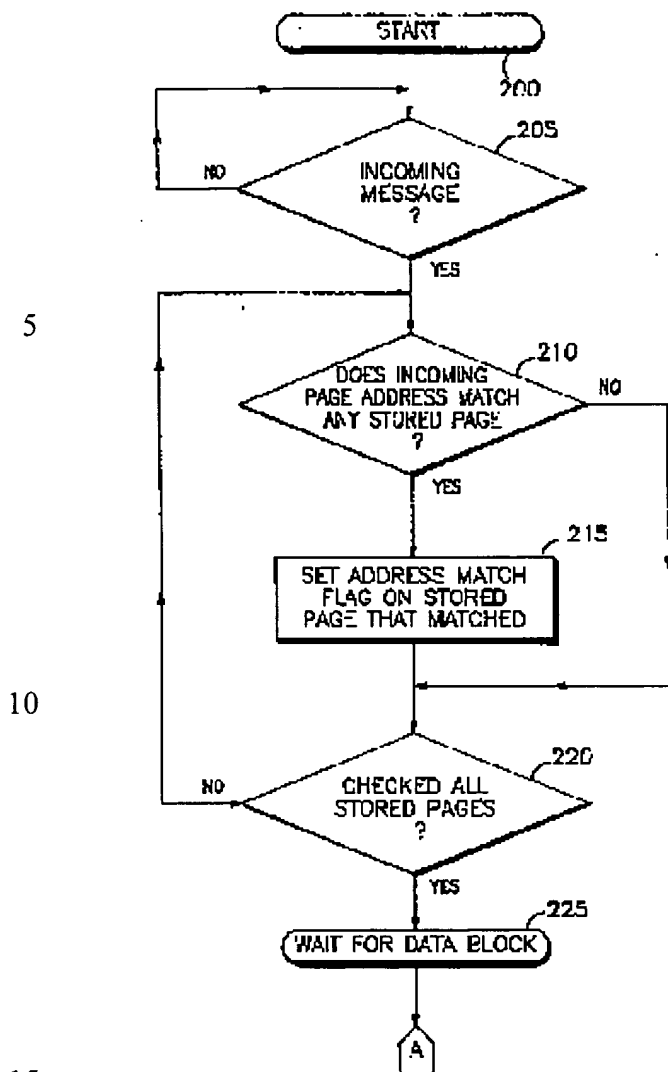
a method of controlling a

receiver station (fig. 4), said receiver station (fig. 4) including a receiver (#45, 50, 60), a memory (#10) operatively connected to said receiver, (#45, 50, 60), and at least one processors (#90) operatively connected to said memory (#110), said method comprising the steps of:



receiving an information transmission containing a program(fig. 7A);
 performing a primary error correction routine (fig. 7B) by processing at least
 some of said information transmission;
 passing information (#235) contained in said program to said memory (#110);

Art Unit: 2744



discerning a failure evidencing an incomplete or incorrect program element (#245, 275, 260) in said memory by reprocessing information (#250, 285, 290, 300) received in said information transmission; and

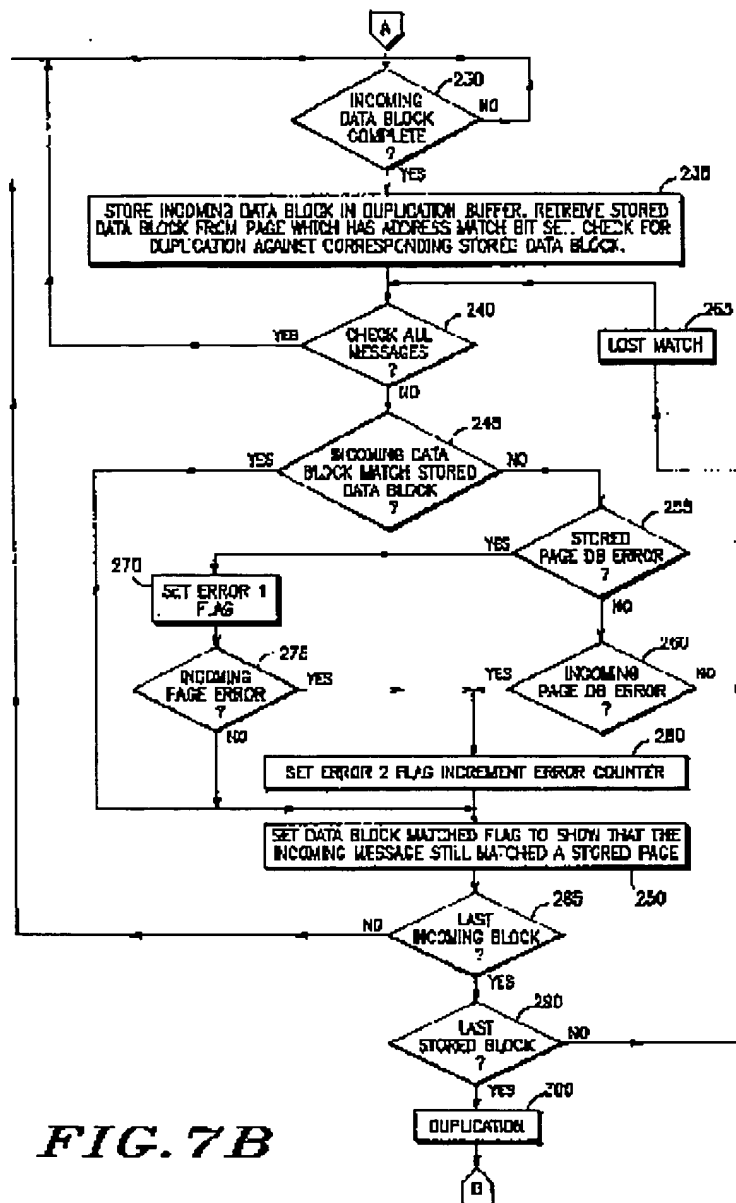
executing a predetermined secondary error correction routine (fig. 7C) in consequence of said step of discerning a failure (#245, 275, 260).

Regarding claim 7, DeLuca, et al disclose step of placing or replacing data (#360) at said memory (#110) to complete or correct a program element in consequence of said step of executing a predetermined

secondary error correction routine (Fig. 7C).

Regarding claims 9, DeLuca, et al show selecting a value designating an instruction to be executed; and jumping to a memory location based on said selected value (#235).

Art Unit: 2744

**FIG. 7B**

Regarding claim

10, DeLuca, et al teach

the step of selecting a

value comprises

computing at least some

an address of said

memory location (#235).

Regarding claim

11, DeLuca, et al display

the steps of:

storing history-of

efficiency information

(#330, 335); and

instituting or

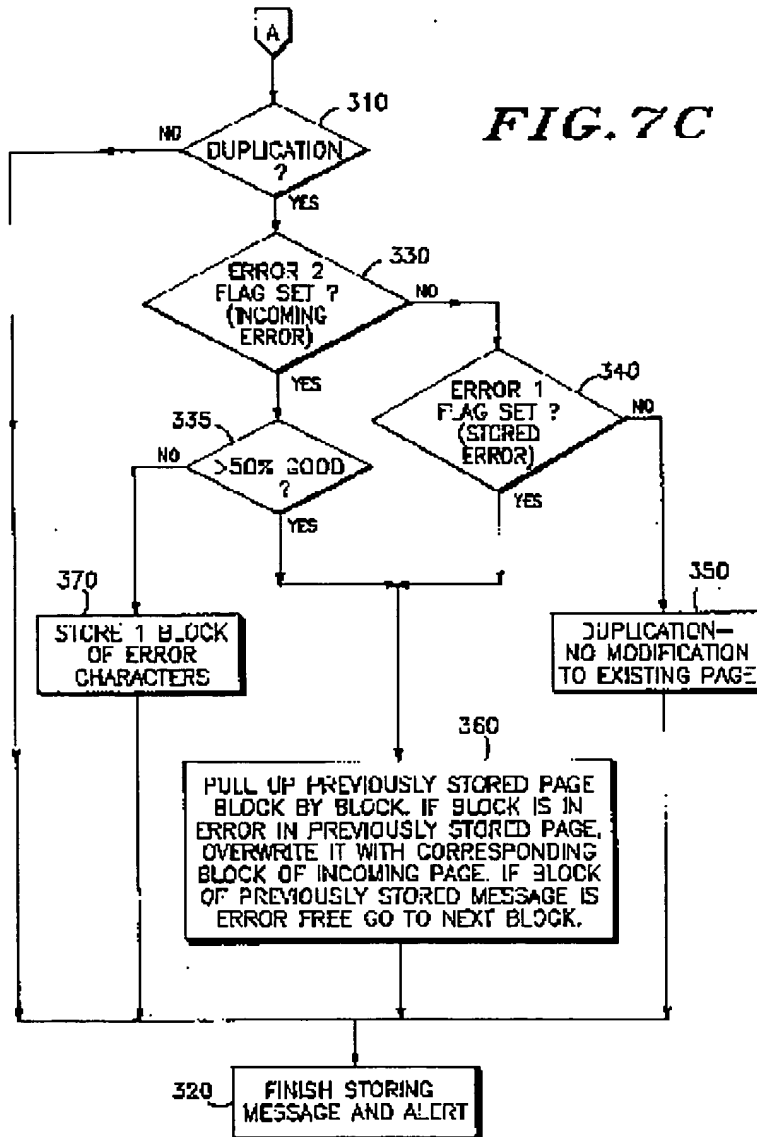
restoring functionality

(#360) of at least one of

said one or more

processors (E90) based on said stored history of efficiency information (#330, 335).

Art Unit: 2744

FIG. 7C

Regarding claim 12, DeLuca, et al exhibits the step of discerning a failure (#245, 275, 260) comprises comparing information (#250) stored at a first memory location (fig. 6C) to information stored at a second memory location (fig. 6B).

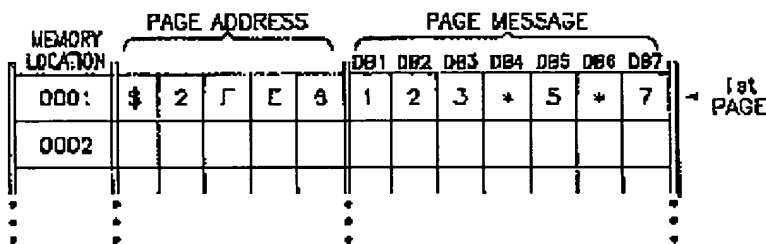
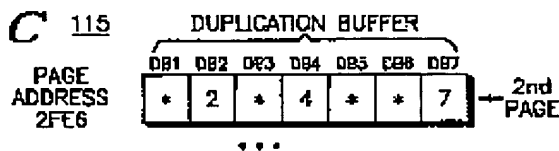
Regarding claim 13, DeLuca, et al disclose at least one of said first memory location (fig. 6C) and said second memory location (Fig. 6B) is a

dedicated register at said one or more processors (#90).

Regarding claim 14, DeLuca, et al show primary error correction routine (fig. 7B) includes forward error correction (#275, #260) and said step of discerning a failure is

Art Unit: 2744

based on information processed (#250) in said step of performing primary error correction.

FIG. 6B 110**FIG. 6C** 115

Regarding claim 15,

DeLuca, et al teach

incomplete or incorrect

program element in said

memory (#110) is one of (1)

an incomplete or incorrect

element of said received

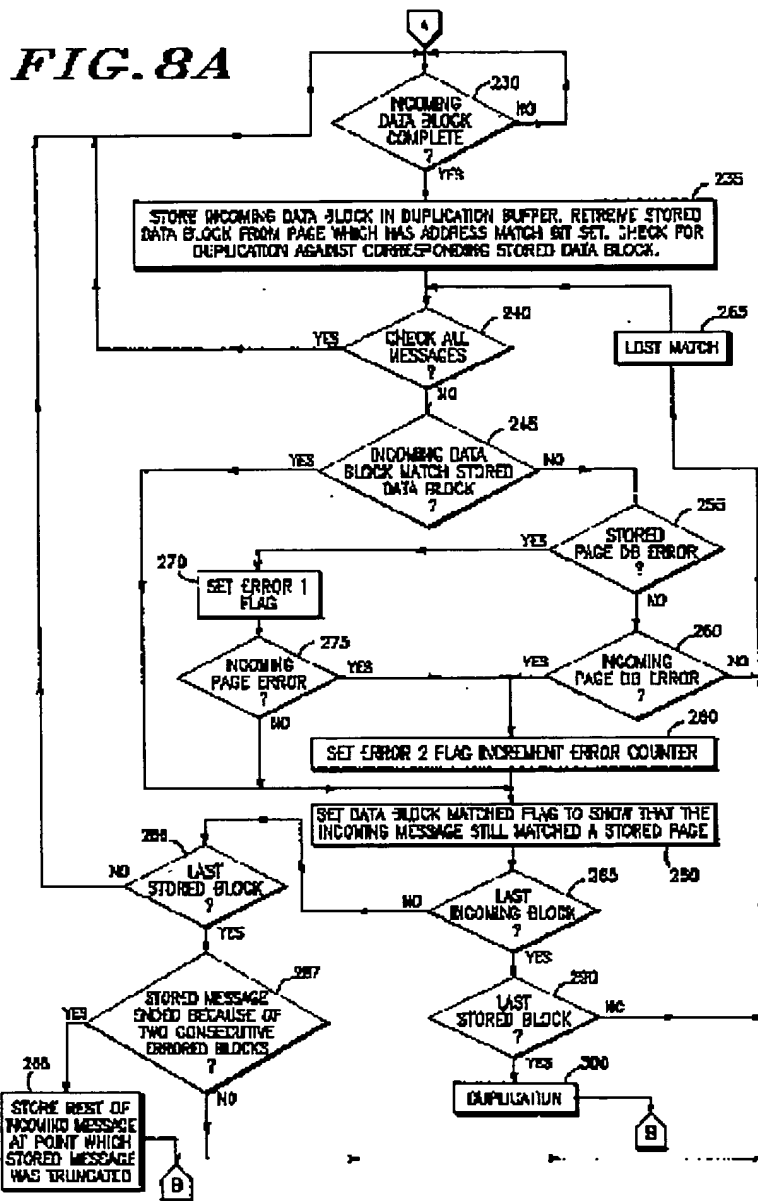
program (#287, #288) and

(2) some or all of a second program.

Regarding claim 16, DeLuca, et al display the method of claim 5, further comprising the step of performing forward error correction information (#275, 260) to be outputted in or with said program before performing said steps of (1) performing a primary error correction routine (fig. 7C) and (2) discerning a failure (#335).

Regarding claim 17, DeLuca, et al exhibit a step of performing a primary error correction routine (fig. 8A) further comprises selecting program material to be or not be outputted (#288) at said receiver station (fig. 4).

Art Unit: 2744



Regarding claim 18, DeLuca, et al disclose selecting program material (#360) to be or not to be outputted (#320) at said receiver station (fig. 4) in accordance with said second error correction routine (fig. 7C).

Regarding claim 19, DeLuca, et al show the program includes one or more of a television program, a radio program, a computer program, and some of a combined medium program (col. 1,

1.10-27).

Art Unit: 2744

Regarding claim 20, DeLuca, et al teach the step of selecting one or more of a program instruction set intermediate generation set, combining synch command, and data to be processed to present combined medium programming (col. 1.1.10-27).

Regarding claim 21, DeLuca, et al display the step of programming said receiver station with at least some of said primary error correction routine (fig. 7B) and said secondary error correction routine (fig. 7C).

Regarding claims 23, 27, and 30, DeLuca, et al exhibits a method of controlling a receiver station (fig. 4), said receiver station (fig. 4) including a receiver (#45, 50, 60) a memory (#110) operatively connected to said receiver (#45, 50, 60) and one or more processors (90) operatively connected to said memory (#45, 50, 60), comprising the steps of:

(1) receiving an information transmission at a transmission station (fig. 1, #20);

(2) generating a program (col. 1, 1.10-35); and

(3) transmitting (#205) said information transmission containing said program (col. 11.10 col. 21.5 to enable said receiver station (fig. 4) to perform a primary error correction routine (fig. 7B) by processing at least some of said information transmission, discerning a failure evidencing an incomplete or incorrect program element (#287, 288) by reprocessing information received in said information transmission (#360) and executing a predetermined secondary error correction routine (fig. 7C) in consequence of discerning a failure.

Art Unit: 2744

Regarding claims 24 and 28, DeLuca, et al show a method of controlling a receiver station fig. 4, said receiver station fig. 4 including a receiver (#45, 50, 60), a memory (#110) operatively connected to said receiver (#45, 50, 60) and one or more processors (#90) operatively connected to said memory (#110), comprising the steps

5 of:

- (1) receiving an information transmission (col. 1, 1.10-27) to be transmitted;
- (2) receiving an instruct signal (col. 2, 1.61-10 col. 31.17 which is effective to:
 - (a) effect a transmission station (#20) to generate a program (col. 11.10-27),

said receiver station (fig. 4) to perform a primary error correction routine (fig. 7B) by

10 processing at least some of said information transmission discerning a failure evidencing an incomplete or incorrect program element (#287, 288) by reprocessing information received in said information transmission (#360), and executing a predetermined secondary error correction routine in (fig. 7C) in consequence of discerning a failure; or

15 (b) effect a receiver station (fig. 4) to generate a program (col. 1.10-27), said receiver station (fig. 9) to perform a primary error correction routine (fig. 7B, AA) by processing at least some of said information transmission, discerning a failure evidencing an incomplete or incorrect program element by (#287, 288) by reprocessing information received in said information transmission (#360), and executing a

Art Unit: 2744

predetermined secondary error correction routine (fig. 7C) in consequence of discerning a failure;

(3) receiving a transmitter control signal (col. 21.61 to col. 3, 1.17) which operates at said transmitter station to (#20) to communicate said program to a transmitter (#20); and

(4) transmitting said information transmission, instruct signal and said transmitter control signal (col. 21 1.61 to col. 3, 1.17).

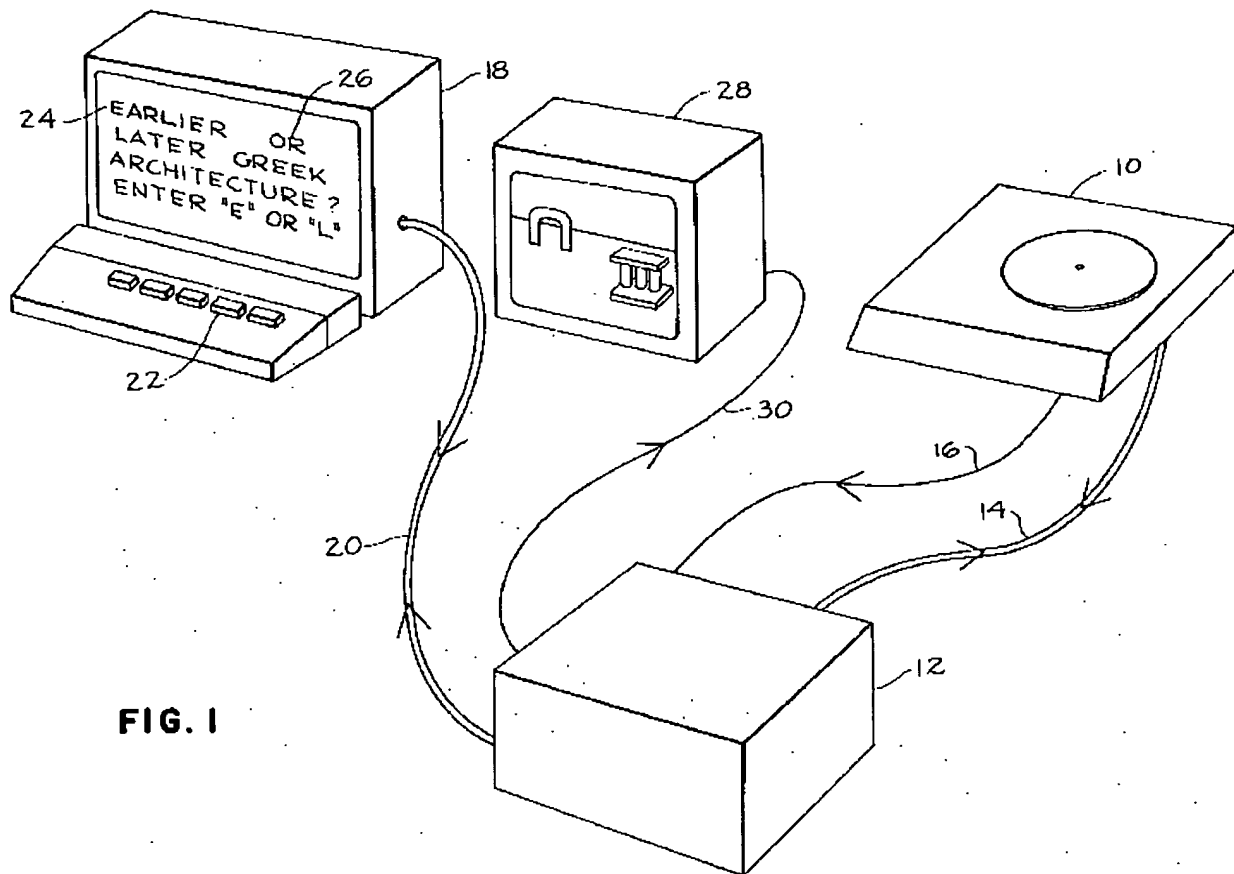
DeLuca, et al does not disclose programming the receiver station to perform a predetermined second error correction routine in a accordance with a processor instruction.

George, et al teaches the use of programming a station (figure 1, #12) to perform a predetermined second error correction routine in a accordance with a processor instruction in a method for controlling a station for the purpose of substantially in real time decoding and error correction of encoded data. Hence, it would have been obvious at the time the claimed invention was made to one of ordinary skill in the art to incorporate the use of programming the receiver station to perform a predetermined second error correction routine in a accordance with a processor instruction, as taught by George, et al, in the method of controlling a receiver station of DeLuca, et al in order to substantially in real time decoding and error correction of encoded data.

Art Unit: 2744

DeLuca, et al does not disclose clearing some or all of the memory and interrupting a processor. The Examiner takes Official Notice that clearing some or all the memory and interrupting a processor in a method of controlling a receiver is well known in the art. Hence, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to incorporate the well known clearing some or all of the memory and interrupting a processor in the method of DeLuca, et al in order to reset the receiver when an error is detected in the program reception.

Art Unit: 2744



Double Patenting

11. After reviewing the restriction requirement under 35 USC 121 in US Patent 5,233,654 it is
5 believed that the claims of the instant application are subject to a double patenting analysis against
US Patent 5,233,654 and US Patent 5,335,277.

Art Unit: 2744

12. In view of further analysis and applicant's arguments, the rejection of the claims in the instant application under double patenting based on the broad analysis of *In re Schneller* as set forth in paragraphs 7-10 of the previous Office Action has been withdrawn.

5

13. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985) *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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14. A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Art Unit: 2744

15. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

16. Conflicts exist between claims of the following related co-pending applications which

5 includes the present application:

	#	Ser. No.		#	Ser. No.		#	Ser. No.
	1	397371		2	397582		3	397636
10	4	435757		5	435758		6	437044
	7	437045		8	437629		9	437635
	10	437791		11	437819		12	437864
	13	437887		14	437937		15	438011
	16	438206		17	438216		18	438659
15	19	439668		20	439670		21	440657
	22	440837		23	441027		24	441033
	25	441575		26	441577		27	441701
	28	441749		29	441821		30	441880
	31	441942		32	441996		33	442165
20	34	442327		35	442335		36	442369

Art Unit: 2744

	37	442383	38	442505	39	442507
	40	444643	41	444756	42	444757
	43	444758	44	444781	45	444786
	46	444787	47	444788	48	444887
5	49	445045	50	445054	51	445290
	52	445294	53	445296	54	445328
	55	446123	56	446124	57	446429
	58	446430	59	446431	60	446432
	61	446494	62	446553	63	446579
10	64	447380	65	447414	66	447415
	67	447416	68	447446	69	447447
	70	447448	71	447449	72	447496
	73	447502	74	447529	75	447611
	76	447621	77	447679	78	447711
15	79	447712	80	447724	81	447726
	82	447826	83	447908	84	447938
	85	447974	86	447977	87	448099
	88	448116	89	448141	90	448143
	91	448175	92	448251	93	448309
20	94	448326	95	448643	96	448644

Art Unit: 2744

	97	448662	98	448667	99	448794
	100	448810	101	448833	102	448915
	103	448916	104	448917	105	448976
	106	448977	107	448978	108	448979
5	109	449097	110	449110	111	449248
	112	449263	113	449281	114	449291
	115	449302	116	449351	117	449369
	118	449411	119	449413	120	449523
	121	449530	122	449531	123	449532
10	124	449652	125	449697	126	449702
	127	449717	128	449718	129	449798
	130	449800	131	449829	132	449867
	133	449901	134	450680	135	451203
	136	451377	137	451496	138	451746
15	139	452395	140	458566	141	458699
	142	458760	143	459216	144	459217
	145	459218	146	459506	147	459507
	148	459521	149	459522	150	459788
	151	460043	152	460081	153	460085
20	154	460120	155	460187	156	460240

Art Unit: 2744

	157	460256	158	460274	159	460387
	160	460394	161	460401	162	460556
	163	460557	164	460591	165	460592
	166	460634	167	460642	168	460668
5	169	460677	170	460711	171	460713
	172	460743	173	460765	174	460766
	175	460770	176	460793	177	460817
	178	466887	179	466888	180	466890
	181	466894	182	467045	183	467904
10	184	468044	185	468323	186	468324
	187	468641	188	468736	189	468994
	190	469056	191	469059	192	469078
	193	469103	194	469106	195	469107
	196	469108	197	469109	198	469355
15	199	469496	200	469517	201	469612
	202	469623	203	469624	204	469626
	205	470051	206	470052	207	470053
	208	470054	209	470236	210	470447
	211	470448	212	470476	213	470570
20	214	470571	215	471024	216	471191

Art Unit: 2744

	217	471238	218	471239	219	471240
	220	472066	221	472399	222	472462
	223	472980	224	473213	225	473224
	226	473484	227	473927	228	473996
5	229	473997	230	473998	231	473999
	232	474119	233	474139	234	474145
	235	474146	236	474147	237	474496
	238	474674	239	474963	240	474964
	241	475341	242	475342	243	477547
10	244	477564	245	477570	246	477660
	247	477711	248	477712	249	477805
	250	477955	251	478044	252	478107
	253	478544	254	478633	255	478767
	256	478794	257	478858	258	478864
15	259	478908	260	479042	261	479215
	262	479216	263	479217	264	479374
	265	479375	266	479414	267	479523
	268	479524	269	479667	270	480059
	271	480060	272	480383	273	480392
20	274	480740	275	481074	276	482573

Art Unit: 2744

	277	482574	278	482857	279	483054
	280	483169	281	483174	282	483269
	283	483980	284	484275	285	484276
	286	484858	287	484865	288	485282
5	289	485283	290	485507	291	485775
	292	486258	293	486259	294	486265
	295	486266	296	486297	297	487155
	298	487397	299	487408	300	487410
	301	487411	302	487428	303	487506
10	304	487516	305	487526	306	487536
	307	487546	308	487556	309	487565
	310	487649	311	487851	312	487895
	313	487980	314	487981	315	487982
	316	487984	317	488032	318	488058
15	319	488378	320	488383	321	488436
	322	488438	323	488439	324	488619
	325	488620	326	498002	327	511491
	328	485773	329	113329		

Art Unit: 2744

17. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. The attached Appendix provides clear evidence that such conflicting claims exist
5 between the 329 related co-pending applications identified above. However, an analysis of all claims in the 329 related co-pending applications would be an extreme burden on the Office requiring millions of claim comparisons.

18. In order to resolve the conflict between applications, applicant is required to either:

10 (1) file terminal disclaimers in each of the related 329 applications terminally disclaiming each of the other 329 applications, or;

(2) provide an affidavit attesting to the fact that all claims in the 329 applications have been reviewed by applicant and that no conflicting claims exists between the applications.

Applicant should provide all relevant factual information including the specific steps taken
15 to insure that no conflicting claims exist between the applications, or;

(3) resolve all conflicts between claims in the above identified 329 applications by identifying how all the claims in the instant application are distinct and separate inventions from all the claims in the above identified 329 applications (note: the five examples in the attached Appendix are merely illustrative of the overall problem. Only correcting the five
20 identified conflicts would not satisfy the requirement).

Art Unit: 2744

19. *Failure to comply with the above requirement will result in abandonment of the application.*

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Response to Arguments

20. Applicant's arguments with respect to claims 5-24 have been considered but are moot in view of the new ground(s) of rejection.

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Art Unit: 2744

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

McCalley, et al disclose a presentation player is described for use in an
5 interactive digital communications system which may selectively communicate
particular multimedia presentations to each of a plurality of subscribers along a
CATV cable network, or other communications network. The player is part of a
digital interactive system that distributes information representing requested
presentations in the form of digital data on distribution channels to a plurality of
10 presentation players located along the communications network. Each of the
subscribers has a television set connected to one of these presentation players.
The digital data is uniquely addressed to a particular subscriber and is
processed by his corresponding presentation player to produce analog TV
signals comprising the multimedia presentation. The presentation player
15 automatically tunes itself to a distribution channel and can process data which
include motion video sequences, background music, and real-time live video
images, in addition to still-video images with audio commentary. The
presentation player of the present invention comprises a converter capable of
receiving the distribution channel frequencies and selecting one of those
20 frequencies for further processing of digital data transmitted thereon.

Art Unit: 2744

22. Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

5

23. A shortened statutory period for response to this final action is set to expire THREE MONTHS from the date of this action. In the event a first response is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

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Art Unit: 2744

24. This application is subject to the provisions of Public Law 103-465, effective June 8, 1995. Accordingly, since this application has been pending for at least two years as of June 8, 1995, taking into account any reference to an earlier filed application under 35 U.S.C. 120, 121 or 365(c), applicant, under 37 CFR 1.129(a), is entitled to have a first submission entered and considered on the merits if, prior to abandonment, the submission and the fee set forth in 37 CFR 1.17(r) are filed prior to the filing of an appeal brief under 37 CFR 1.192. Upon the timely filing of a first submission and the appropriate fee of \$730.00 for a large entity under 37 CFR 1.17(r), the finality of the previous Office action will be withdrawn. If a notice of appeal and the appeal fee set forth in 37 CFR 1.17(e) were filed prior to or with the payment of the fee set forth in 37 CFR 1.17(r), the payment of the fee set forth in 37 CFR 1.17(r) by applicant will be construed as a request to dismiss the appeal and to continue prosecution under 37 CFR 1.129(a). In view of 35 U.S.C. 132, no amendment considered as a result of payment of the fee set forth in 37 CFR 1.17(r) may introduce new matter into the disclosure of the application.

25. If applicants have filed multiple proposed amendments which, when entered, would conflict with one another, specific instructions for entry or non-entry of each such amendment should be provided upon payment of any fee under 37 CFR 1.17(r).

26. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to **Primary Examiner Cumming** whose telephone number is **(703) 305-4394**. The Examiner can normally be reached on Monday through Thursday (and alternate Fridays) from 8:30am to 6:00pm, EST. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is **(703) 305-3900**.

Art Unit: 2744

Any response to this final action should be mailed to:

Box AF

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 305-9051, (for formal communications; please mark

"EXPEDITED PROCEDURE")

Or:

(703) 305-9508 (for informal or draft communications, please label

"PROPOSED" or *"DRAFT"*)

Hand-delivered responses should be brought to Crystal Park II, 2021

Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).


WILLIAM CUMMING
PRIMARY EXAMINER
GROUP 2600